

EASTERN DISTRICT OF TEXAS

After careful consideration, the court concludes plaintiff's objections are without merit. Plaintiff contends one of the strikes cited by the magistrate judge, *Carraquillo v. Upton*, Civil Action No. 1:09cv817 (E.D. Tex. 2010), should not be used against him because he was part of a class action. In support of his proposition, plaintiff cites *Meisberger v. Donahue*, 245 F.R.D. 627 (S. D. Ind. 2007). However, *Carraquillo* is not analogous to *Meisberger*.

In *Meisberger*, the court was discussing the possible inequity of applying § 1915(g) to unnamed class members, but did not address the issue. *Id.* at 630. In plaintiff's case, on the other hand, he was a named member of the action in *Carraquillo* and he was represented by counsel. The Fifth Circuit has not held that §1915(g) does not apply to each named class member. Finally, plaintiff's claims in this action are insufficient to demonstrate he was in imminent danger of serious physical injury at the time he filed the complaint. *See Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 20th day of August, 2018.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE